IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

WP(C).No. 29946 of 2006(M)

PETITIONER:

MRS.RUBY ABRAHAM, MANAGING PARTNER,
M/S.RUBY AGENCIES, KAVUMBHAGOM, THIRUVALLA.

BY ADV. SRI.SUNIL JACOB JOSE

RESPONDENTS:
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1. **DEPUTY TRANSPORT COMMISSIONER,**
   SOUTH ZONE, THIRUVANANTHAPURAM.

2. **THE JOINT REGIONAL TRANSPORT OFFICER,**
   THIRUVALLA.

BY GOVERNMENT PLEADER SMT. RENU D.P.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON 16/01/2007 DELIVERED THE FOLLOWING:

WPC.NO.29946/2006 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE 2ND RESPONDENT.**

EXT.P2: **COPY OF THE APPLICATION FILED BY THE PETITIONER.**

EXT.P3: **COPY OF THE ORDER NO.CI/1773/2005/TVLA DTD. 24/05/05 OF THE 2ND RESPONDENT.**

EXT.P4: **COPY OF THE APPEAL PREFERRED BEFORE THE 1ST RESPONDENT.**

EXT.P5: **COPY OF THE ORDER NO.C/1292/SZ/2005 DTD. 02/08/2005 PASSED BY THE 1ST RESPONDENT.**

EXT.P6: **COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WRIT PETITION © NO.9942/2006(H) DTD. 22/09/2006.**

EXT.P7: **COPY OF THE ORDER NO.C/1292/SZ/06 DTD. 25/10/2006 OF THE 1ST RESPONDENT.**

/TRUE COPY/

Kss

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 29946 OF 2006-M

JUDGMENT

The petitioner is the Managing Partner of a firm, engaged in the distribution of engine oils, gear oils etc. For the distribution of the aforementioned goods, she purchased an open body Tata SFC 407, which is a light goods vehicle, on 21.2.2005. The said vehicle was registered as per Ext.P1 registration certificate. The said vehicle was also being used for transporting ayurvedic medicines. So, to give protection to the ayurvedic medicines from sun and rain, a cover was constructed on the top portion of the open body. Thereafter, the petitioner submitted Ext.P2 application for permission for the said conversion. The said application was rejected by the 2nd respondent, by Ext.P3 order dated 24.5.2005. She filed Ext.P4 appeal against that order, before the 1st respondent Deputy Transport Commissioner. The said appeal was dismissed by Ext.P5 order. The petitioner challenged Ext.P5 before this Court by filing W.P.(C) 9942/2006. The said writ petition was disposed of by Ext.P6 common judgment, directing the registering authority to reconsider the matter. The relevant portion of the said judgment reads as follows:

> "4. Heard the learned counsel on both sides. Going by the appellate order, the contentions of the petitioner have to be accepted. Petitioner's case has not been examined by adverting to the definition of alteration in the explanation to Section 52 of the Motor Vehicles Act. Normally, open body vehicles use tarpaulin to protect it from sun and rain. Instead of it, permanent structure is made. So, prima facie, the alteration may not affect the basic structure. The petitioner submits that, in similar circumstances permission has been granted by other Registering Authorities to convert open body vehicles as closed body vehicles. This submission is not denied by the second respondent in its counter affidavit.
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> 5. Having regard to the facts of the case, Ext.P7 is vitiated for not taking into account the relevant contentions of the petitioner. Accordingly, it is quashed. The first respondent is directed to take a fresh decision in the matter after affording an opportunity of being heard to the petitioner. The order shall be a speaking order, dealing with the various contentions of her, including those specifically adverted to above. Fresh orders in this regard shall be passed by the first respondent within one month from the date of production of a copy of this judgment."

The Deputy Transport Commissioner reconsidered the appeal and dismissed the same by Ext.P7 order. The relevant portion of the said order reads as follows:

> "The arguments of the registered owner deserves no merits. The explanation note 3 clearly says 'Alteration meaning of'. The explanation to Section 52 provides that for the purpose of this Section, alteration means a change in the structure of a vehicle which results in a change in its basic feature. The basic features of every Motor Vehicles are specified by the manufacturer and furnished before the testing authority (proto type test) under Rule 126 of the CMV Rules. Form 21 also contains the particulars specified by the

manufacturer.

> The vehicle was originally fitted with a body at the rear by the manufacturer, but it has been re-fitted as against the approval of the Additional Registering Authority and the type of vehicle and ULW change in Form 21 particulars. As per the measurement certificate the ULW of the vehicle is 2315 Kgs before alteration. But as per weighment certificate the ULW is 2715 Kgs after alteration. As per the specifications of the dealer, the Normal Load body (mm) is 2833 x 1908 x 444."

The appellate authority proceeded on the footing that the particulars furnished in the registration certificate in Form 21 are the basic features and there cannot be any change for the same. It was found that the unladen weight of the vehicle before alteration was 2315 Kgs and after alteration it was 2715 Kgs. A change was noticed in the measurement of the body also. In the light of the said findings, the appeal was dismissed. This Writ Petition is filed, challenging Exts.P3 and P7. The petitioner challenges the above orders, on the ground that they run counter to Section 52 of the Motor Vehicles Act and also Rules 96 and 103 of the Kerala Motor Vehicles Rules.

2. The respondents have filed a statement, supporting the impugned orders.

3. Heard the learned counsel on both sides. The relevant Section concerned in this case is Section 52, which reads as follows:

"52. Alteration in motor vehicle:--(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at variance with those originally specified by the manufacturer.

Provided that where the owner of a motor vehicle makes modification of the engine, or any part thereof, of a vehicle for facilitating its operation by different type of fuel or source of energy including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit, such modification shall be carried out subject to such conditions as may be prescribed:

Provided further that the Central Government may prescribe specifications, conditions for approval, retrofitment and other related matters for such conversion kits:

Provided also that the Central Government may grant exemption for alteration of vehicles in a manner other than specified above, for any specific purpose.

(2) Notwithstanding anything contained in sub s-(1), a State Government may, by notification in the Official Gazette, authorise subject to such conditions as may be specified in the notification, and permit any person owning not less than ten transport vehicles to alter any vehicle owned by him so as to replace the engine thereof with engine of the same make and type, without the approval of registering authority.

(3) Where any alteration has been made in motor vehicle without the approval of registering authority or by reason of replacement of its engine without such approval under sub s. (2), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of registration may be entered therein.

> (4) A registering authority other than the original registering authority making such entry shall communicate the details of the entry to the original registering authority.
>
> (5) Subject to the provisions made under sub-ss. (1), (2), (3) and (4), no person holding a vehicle under a hire-purchase agreement shall make any alteration to the vehicle except with the written consent of the registered owner.
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> Explanation:- For the purposes of this section, 'alteration' means a change in the structure of a vehicle which results in a change in its basic feature." (Emphasis supplied)

If Section 52(1) if read in isolation, no alteration is permissible, even with the permission of the registering authority. But sub-section (3) thereof says what is the procedure to be followed when a motor vehicle is altered without the approval of the registering authority. Sub-section (4) provides for making entry in the register maintained by the registering authority about the alterations made. When sub-section (5) states that for alteration to a vehicle permission of the financier is necessary, the same also indicates that alteration is not prohibited, though sub-section (1) of Section 52 may appear to do so. This inference is further fortified by Rules 96 and 103 of the Kerala Motor Vehicles Rules. They are quoted below for convenient reference.

> "96. Inspection of Vehicle prior to Registration:--(1) Inspecting Officer – The Registering Authority, or such authority as the Government may by order appoint, shall

inspect the vehicle as required by section 44 of the Act.

(2) Production of Vehicle for inspection:-- The vehicle shall be produced for inspection along with the required documents for registration, before the inspecting officer, for a comparative scrutiny of the particulars contained in the application with the physical features of the vehicle, and for ascertaining its fitness for use in public place.

(3) Report of Inspecting Officer:-- The inspecting officer after making modifications deemed necessary in the particulars contained in the application, shall certify therein regarding the correctness of the entries and the fitness of the vehicle:

Provided that in the case of a transport vehicle, or for any other vehicle of which the body is not factory-built or a stereo-typed pattern previously approved by the Registering Authority, he shall prepare and issue a measurement certificate in Form 'MC' and a sketch showing therein the seating arrangements, dimensions and other relevant particulars under Chapter VII of these rules. The inspecting officer shall simultaneously forward a copy each of the measurement certificate and sketch to the concerned Registering authority also." (Emphasis supplied)

"103. Recording alteration to a motor vehicle:--(1) Ascertaining suitability of alteration:-- The Registering Authority may require inspection of the vehicle by himself or by any other inspector of Motor Vehicles to satisfy that any alteration made is suitable. The owner of the vehicle shall, on demand, produce the vehicle for inspection.

(2) The Inspecting Officer shall prepare and issue a fresh measurement certificate in Form 'MC' and a sketch showing therein the seating arrangement, dimensions, etc., as found on inspection in the following circumstance:

(a) When consequent to any structural alteration made in a motor vehicle the particulars of registration noted in one

> or more of items 1, 3, 11, 13 & 19 of the certificate of registration are no longer accurate. (Emphasis supplied)
>
> (b) When consequent to any re-arrangement of loading space or seats, their position or dimensions are altered though such arrangement does not affect the registration particulars referred to in clause (a) above."

Going by the above Rules, the modified vehicle shall be inspected by the Registering Authority or caused to be inspected by the said officer and it should be certified that the vehicle is roadworthy and can be used in public place. So, if the registering authority finds and certifies that the alteration made will not make the vehicle unfit to be used in public place, the registration particulars can be changed accordingly and thereafter the vehicle can be permitted to be used on public roads. But, going by the explanation added to sub-section (5), alteration contemplated in the Act and the Rules takes in only alteration of basic feature. The alteration found in this case is increase in the unladen weight and also some change in the measurement of the vehicle. The respondents proceeded on the footing that whatever is entered in the R.C. Book under Form 21 including unladen weight should be treated as basic features and there cannot be any change of the same.

4. The main point urged before me on behalf of the respondents is that the unladen weight entered in the R.C is a basic feature of the vehicle.

Therefore, there can be no modification of that. On the other hand, the learned counsel for the petitioner would point out that the same can never be treated as a basic feature. Even if it is a basic feature, such change can be made, provided the competent officer certifies that the vehicle is safe to be used on public roads.

5. The learned counsel for the petitioner in support of his submissions, mainly relied on the decision of this Court in **Radhamani v. Joint Regional Transport Officer** (1996(2) KLT 477). The learned counsel, relying on the separate, but concurring judgment of Sreedharan, Ag. C.J. (as His Lordship then was), submitted that the increase as well as reduction in seating capacity is permissible. The same can be done only by varying the unladen weight. The learned Government Pleader for the respondents relied on the judgment of C.S.Rajan, J. in that decision, which says that any alteration which results in 2% increase in the unladen weight requires permission of the registering authority. She also relied on the decisions of this Court in **Vishwanatha Menon v. Addl. Registering Authority** (1998(2) KLT 112 FB), **Fr.George Panakezham v. Regional Transport Officer** (1998(2) KLT 905) and **Baiju v. Joint Regional Transport Officer** (2002(2) KLT SN 127, Case No.156). Relying on those

decisions, she submitted that the change involved in this case is one affecting the basic structure and therefore, permission cannot be granted. In reply, the learned counsel for the petitioner pointed out that the restriction regarding 2% enhancement in the unladen weight has been removed as early as in 2002. So, the decision based on that restriction cannot have any application now.

6. Minor alterations do not require the permission of the registering authority. Alterations which may be described as those affecting the basic feature of the vehicle alone require permission of the said authority. A certificate in Form MC is contemplated when the particulars of the vehicle are different from those cleared in the prototype test. So, additional constructions on the chassis, which will be noted in Form MC certificate can be the basis for entering particulars in the R.C., though they may be at variance with those recorded at the time of prototype test. Otherwise no chassis can be converted into a stage carriage or a goods carriage. So, the stand of the respondents that there cannot be any permission for variation involving the basic structure, cannot be accepted. There can be variation and if the competent officer certifies that the vehicle is fit to be used in public places after the variation, the same can be permitted and the varied details can be entered in the R.C. The relevant Rules when read in the light

of Section 52 and the judgment of Sreedharan, Ag.C.J., in **Radhamani**'s case, make it clear that no other inference is possible. In the result, the impugned orders Exts.P3 and P7 are quashed. It is declared that if, upon inspection by the registering authority, the vehicle is found fit for use in public place, the variation sought by the petitioner shall be allowed and corresponding changes shall be made in the R.C. This, the registering authority shall do within one month from the date of production of a copy of this judgment.

The Writ Petition is disposed of as above.

16th January, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/